

ALTERNATIVE DISPUTE RESOLUTION

Law & Practice

Alternative Dispute Resolution: Law and Practice is divided into 44 chapters which cover alternative dispute resolution (ADR) mechanisms in all their varieties, including negotiation, mediation, conciliation, ombudsman, arbitration, and court adjudication. These ADR mechanisms can be used alongside existing court systems and have gained widespread acceptance because of its speedy resolution of disputes and outcomes that preserve and sometimes even improve relationships.

The primary objective of this book is to enhance reader's understanding of the various regulatory framework governing ADR on diverse issues at both national and international levels. This includes the application of ADR to fintech, Islamic banking and finance, labour, and construction disputes among others. Online dispute resolution, Singapore Mediation Convention, and university arbitration are also featured in this book.

All those concerned, both the legal and non-legal community such as legal practitioners, arbitrators, mediators, academicians, and students, will find this book as a valuable aid for a good understanding of matters pertaining to ADR without having to refer to several other sources.



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Edited by
Adnan Yaakob
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CHAPTER 43

ONLINE DISPUTE RESOLUTION AND ITS APPLICATION IN FINANCIAL DISPUTES*

Introduction

This chapter gives an outlook of the concept of Online Dispute Resolution (ODR) and its application in financial disputes. An insight into the origin, initial experiments and ODR pilot projects in non-commercial disputes resolution is given. While exploring the nature of ODR mechanisms, a brief explanation of the different permutations, is analysed. The chapter further examines the deployment of ODR in commercial disputes with detailed descriptive analysis of some best practices in financial ODR services around the world, which include, *eBay/SquareTrade* experiment, *Cybersettle/ClickNsettle* and credit reporting ODR. This chapter concludes with an exposition of current international and regional efforts towards the development of ODR in the resolution of commercial disputes through the United Nations Commission for International Trade (UNCITRAL), the Organisation of American States (OAS) and the European Union (EU).

* This chapter is contributed by Sodiq O. Omoola.

Concept Of ODR

Online Dispute Resolution emerged in the 21st Century from developments in the field of Alternative Dispute Resolution (ADR) and its adaptability to peculiarities of the online environment.¹ In addition, it was primarily borne out of the need to deploy cutting-edge information technology innovation to aid access to justice. In the past decades, automation of service delivery was perceived as a threat to labour in the non-legal sectors with job cuts, due to a technological takeover of clerical jobs such as cashiers, secretaries and bookkeepers.² In the justice delivery sector, experts predict a paradigm shift in the way lawyers perform their jobs and a potential for automation of the dispute resolution processes. This might be seen as threatening the ODR traditional methods of justice delivery.

ODR can also be understood from the convergence perspective, i.e., dispute resolution converges with Information and Communication Technologies (ICT). Perhaps one of the fulfilments of the Global Pound Conference and the Woolf Reforms, is that court systems globally have incorporated the ADR mechanisms in the administration of justice. Subsequently, amicable dispute settlement paradigms have also been adopted in regional and international legal instruments.³ Without doubt, ADR has proved to be the most suitable and cost-effective method for resolving disputes arising from commercial and financial

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- 1 E Katsh, J Rifkin *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (2001) p. 19. See also, Sami Kallel 'Online Arbitration' 25 *Journal of International Arbitration* Issue 3 2008 pp. 345-353.
 - 2 R Howard, L Schneider 'Technological change as a social process: A case study of office automation in a manufacturing plant' *Central Issues in Anthropology* 7(2) pp. 79-84.
 - 3 S Smith, I Cingel, R Devaux, G Gelberg 'International Commercial Dispute Resolution' 44 *Int'l L.* 113 2010.

transactions in recent years. However, new challenges to financial dispute resolution abound in electronic and online disputes. Lack of a regulatory framework for stringent management of complaints is capable of clogging the justice system with high volume small claims.⁴ Courts too are often clogged with expensive, congested, long procedures and formality.⁵ This results in long delay as decisions may take even years before a judgment sees the light of the day, and the economic or even emotional costs involved can be devastating for consumers.

In the administration of justice sector, an effective ODR paradigm has the potential of automating the dispute resolution processes which experts predict may soon threaten the legal profession and change the way lawyers do their businesses.⁶ From the foregoing, the dispute resolution sector of modern society got its fair share of innovative technology with the emergence of ODR. Richard Susskind was aptly referring to ODR and the changing role of lawyers when he observed:

The future of lawyers could be prosperous or disastrous ... lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years ...⁷

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- 4 L Del Duca, C Rule, V Rogers 'Designing a Global Consumer Online Dispute Resolution (ODR) System for Cross-Border Small Value-High Volume Claims — OAS Developments' *Uniform Commercial Code Law Journal* 42(3) pp. 221-264 (retrieved from <http://papers.ssrn.com/abstract=1635463>).
 - 5 S Schiavetta 'Online Dispute Resolution, E-Government and Overcoming the Digital Divide' *BILETA* Conference 1-9 April 2005 (retrieved from [http://bileta.nsdesign7.net/content/files/conference_papers/2005/Online Dispute Resolution, E-Government and Overcoming the Digital Divide.pdf](http://bileta.nsdesign7.net/content/files/conference_papers/2005/Online_Dispute_Resolution,_E-Government_and_Overcoming_the_Digital_Divide.pdf)).
 - 6 B Rose 'NO WAY BACK: Don't Look Now, but a Technology Revolution is Changing the Way Lawyers Work' *ABA Journal* Vol. 95(5) 2009 p. 64.
 - 7 R Susskind *The End of Lawyers?: Rethinking the Nature of Legal Services* (2010) p. 269.

The incorporation of innovative ICT equipment and technology into dispute resolution mechanisms began with taking evidence *via* video-conferencing, case-management software and online filing applications and admitting electronic copies of documents. This was viewed as a mere aid to the judicial process, which was easier and faster as parties can access justice at a cheaper cost; hence, the emergence of courts facilitated by ICT, where the procedural steps mimic the court systems. Cyber courts and cyber tribunals are studied differently from ODR, while the former is the adaptation of technology to court procedures, the latter is the use of technology partly or wholly to ADR processes.⁸ However, the distinction could be blurred where courts provide ADR service i.e., court-annexed mediation. Dr Thomas Schultz described the situation as follows:

Cybercourts are simply court proceedings that use exclusively (or almost exclusively) electronic communication means. They should be, and often are, considered to be part of the ODR movement, for two reasons. First, because the ODR movement emerged because of the clash between the ubiquity of the Internet and the territoriality of traditional, offline dispute resolution mechanisms. The term ODR is thus opposed to offline dispute resolution mechanisms, not to courts. Online ADR is only one part of ODR. Second, courts do not only provide litigation. As I said before, there also is court-based mediation and non-binding arbitration.⁹

In essence, such feat recorded in the administration of justice system led to integration of such technological advancement into traditional ADR mechanisms, hence the emergence of terms such as 'Online Mediation', 'Online Arbitration', etc.¹⁰

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- 8 MM Alborno, NG Martín 'Feasibility Analysis of Online Dispute Resolution in Developing Countries' The University of Miami Inter-American Law Review 44 U. Miami Inter-Am. L. Rev. 39 (2012) p. 7.
- 9 T Schultz 'An Essay on the Role of Government for ODR: Theoretical Considerations about the Future of ODR' ADR Online Monthly UMASS 7(8) 2003.
- 10 JO Uchenna 'Technology Mediated Dispute Resolution: Challenges and Opportunities for Dispute Resolution' Computer and Telecommunication Law Review 18(5) 2012 p. 126.

Researchers have been inconsistent with the nomenclature of ODR in its early stage, as it is variously known as Electronic Dispute Resolution (EDR); Internet Dispute Resolution (IDR); Online Alternative Dispute Resolution (OADR); and Technology Mediated Dispute Resolution (TMDR).¹¹ However, regardless of the name used, most seem to have agreed that there is an increasing convergence between dispute resolution and ICT, which translates to a new regime for dispute resolution.

Notwithstanding the significant progress in the integration of ICT and ADR mechanisms, it is believed that ADR has not achieved its desired result where disputes arose from transactions, which were conducted partly or wholly in cyberspace. Where the value claim in a dispute is subject to commercial courts, the ability of the court to hand-down decisions in real time at low cost to the parties is put to the test. Traditional courts are grappling with appropriate approaches to resolve e-disputes which are mostly small-claims but high volume. The cost of obtaining justice may well be higher than the actual claim.¹²

Major breakthroughs in the interaction between dispute resolution and ICT occurred in the mid-1990s when the Villanova University established the Virtual Magistrate, and University of Massachusetts' Online Ombuds Office. The Virtual Magistrate Project offered arbitration for rapid, interim resolution of disputes involving, system

11 See, B Baumann 'Electronic dispute resolution (EDR) and the development of Internet activities' *Syracuse L. Rev* 2002 p. 1227; DB Farned 'A New Automated Class of Online Dispute Resolution: Changing the Meaning of Computer-Mediated Communication' *Faulkner L. Rev* 2 pp. 335-360; HA Haloush, BH Malkawi 'Internet Characteristics and Online Alternative Dispute Resolution' *Harv. Negot. L. Rev* 13 2008 pp. 327-349; JO Uchenna 'Technology Mediated Dispute Resolution: Challenges and Opportunities for Dispute Resolution' *Computer and Telecommunication Law Review* 18(5) 2012 pp. 124-134.

12 P Cortes 'Developing online dispute resolution for consumers in the EU: A proposal for the regulation of accredited providers' *International Journal of Law and Information Technology* Vol. 19(1) 2010 p. 3.

administrators, parties in an online system and those who were harmed by online postings, including files and documents.¹³ Both the Ombuds and virtual magistrate were university sponsored pilot projects. Identifying an ODR platform depends on the nature of ICT mechanism deployed. Conley Tyler and Summer Raines observed as follows:

Simply providing information about ADR on a website is not ODR: some dispute process must be attempted. A range of communication methods can be used, including: Email — a virtually instantaneous transfer of mainly text messages, Instant Messaging — a variant on email that allows synchronous online chat, Online Chat — a synchronous, text-based exchange of information, Threaded Discussion (also known as bulletin boards) — an asynchronous, textual exchange of information organised into specific topics, Video/Audio Streams — asynchronous transfer of recorded messages, and Videoconferencing — synchronous transfer of video information.¹⁴

Permutations Of ODR

ODR can be simply explained as taking dispute resolution to cyberspace. In other words, ADR mechanisms facilitated through the use of modern ICT equipment. Therefore, multiple ADR mechanisms which have been used in traditional financial dispute resolution can be adapted to establish flexible ODR platforms in Malaysia.

13 FA Cona 'An Application of Online Systems in Alternative Dispute Resolution' 45 Buffalo Law Review p. 975.

14 S Raines, MC Tyler 'From e-Bay to Eternity: Advances in Online Dispute Resolution' 8th Annual Conference of the American Bar Association's Section on Dispute Resolution 5-8 April 2006 Atlanta.

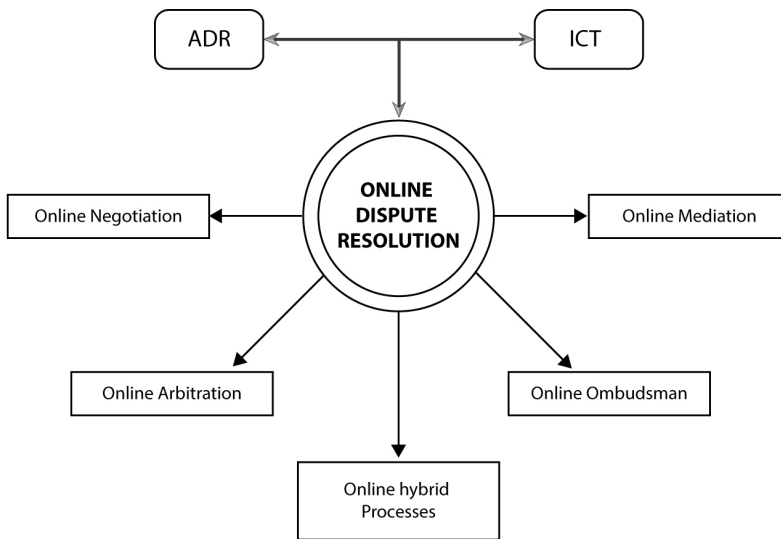


Figure 1: Possible permutations of ODR

Figure 1 shows the various possible permutations of ODR, each permutation being a product of the existing ADR mechanism and innovative ICT techniques. This translates to more ways of seeking redress from financial disputes online, without the need for travelling or being physically present at a dispute resolution institution. Each mechanism can be categorised into two broad groups based on the quantum of online procedures involved in the platform. They are: technology based and technology assisted.¹⁵ The following methods shall be examined: Online Ombudsman, Online Negotiation, Online Mediation, Online Arbitration and Online hybrid processes.

¹⁵ R Devanesan, J Aresty 'ODR and Justice' in MSA Wahab, E Katsh, D Rainey (Eds) *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution* (2012) pp. 263-306.

Online Ombudsman

The work of the Ombudsman involves receiving complaints from the public and managing the cases to conclusion. In an online ombudsman, opening of cases can be easily managed *via* a set of algorithms with user friendly interface to receive complaints from financial consumers through the internet-enabled mobile phones or personal computers.¹⁶ The ODR Ombudsman platform then issues a complaint number for tracking the progress of cases while all communications continue with the complainant *via* email until the dispute is finally resolved and closed. In addition, opening a complaint on an ODR platform helps to create immediate categorisation for complaints with similar features for statistical purposes, which are readily consumable for policy makers.¹⁷

Online Negotiation

This is an ODR mechanism which uses advanced electronic support (with or without video link) to facilitate the dispute resolution process. This system is the most flexible among other mechanisms as it does not include a third party online neutral, but record of the proceedings is kept by an embedded electronic medium for subsequent reference. Online negotiation is absolutely party driven, because it enables parties to negotiate their own agreements by themselves through an electronic medium. When performed with less sophistication, the e-mail is a useful tool for e-negotiation but in its most advanced form, artificial intelligent applications are involved with full automation.¹⁸

16 F Fowlie 'Online Dispute Resolution and Ombudsmanship' in MSA Wahab, E Katsh, D Rainey (Eds) *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution* (2012) pp. 325-340.

17 E Thornburg 'Fast, Cheap & Out of Control: Lessons from the Ican Dispute Resolution Process' *Journal of Small & Emerging Business Law* Vol. 7 2001 p. 328.

18 E Thiessen, p. Miniato, B Hiebert (2012). 'ODR and eNegotiation' in MSA Wahab, E Katsh, D Rainey (Eds.) *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution* (2012) pp. 341-368.

Online Mediation

Online Mediation makes use of similar mechanisms with online negotiation but it includes an active third party, who helps to facilitate the settlement of the dispute *via* a graphical user interface.¹⁹ As with offline mediation, the extent and participation of a third-party and the nature of outcomes are determined by statutes regulating such a mechanism. However, private ODR providers exist in some sectors and parties seek their services voluntarily and are allowed to opt-out and seek redress in other forums.

Online Arbitration

Online Arbitration (OArb) is a binding ODR mechanism that incorporates online features with traditional characteristics of conventional arbitration to deliver fast, cheap and enforceable outcomes.²⁰ OArb can be distinguished from other non-binding ODR methods and has been chosen to possess more potential in banking and consumer ODR among other processes.

Online Hybrid Processes

This is the use of hybrid processes mainly online mediation and online arbitration in the resolution process. Switch in between ODR mechanisms is subject to the consent of parties, need for confidentiality and enforceability of outcomes. The Internet Corporation for Assigned Names and Numbers (ICANN) adopted hybrid processes i.e., Online Ombudsman and Arbitration in its dispute resolution framework, which incorporates the rules of accredited regional domain name and internet dispute resolution centres across the world. Therefore, there can be the existence of two different ODR mechanisms in any given

19 J Suquet-Capdevila 'Exploring Online Consumer Mediation in Catalonia: Principles and Technological Uses' *International Journal of Law and Information Technology* Vol. 20(2) 2012 pp. 1-20.

20 A Schmitz 'Drive-Thru Arbitration in the Digital Age: Empowering Consumers through Binding ODR' 62 *Baylor L. Rev* 2010 p. 178.

framework. Accredited ICANN Internet dispute resolution institutions include, Asian Domain Name Dispute Resolution Centre; National Arbitration Forum; World Intellectual Property Organization (WIPO); The Czech Arbitration Court Arbitration Center for Internet Disputes; Arab Center for Domain Name Dispute Resolution (ACDR) and eResolution Inc.

Best Practices Of ODR In Financial Dispute Resolution

Since the emergence of ODR in the early 1990s, several trials and pilot projects have been carried out to examine the efficacy of ODR in resolution of both offline and online disputes.²¹

ODR sites, deal with different species of disputes including but not limited to issues on family, workplace, e-commerce, insurance, etc.²² While many of the sites were pilots and experiments, the National Centre for Technology and Dispute Resolution (NCTDR) is compiling a list of existing ODR providers which is continuously updated. There are 86 providers as at 29th August 2019 on the NCTDR website.

However, it is necessary to discuss a few of the successful and epoch-making start-ups. This will lay the foundation for necessary models, which can be suited for the different types of disputes. Aspects of ODR in e-commerce as operated by *SquareTrade/eBay* will be discussed, being the first and most successful ODR project, which has survived till date. Insurance claim ODR, as deployed by *Cybersettle* can be used to resolve *takāful* (Islamic insurance) disputes along with a few adaptation and necessary legal frameworks. The background of the first global

21 E Katsh 'ODR: A Look at History — A Few Thoughts About the Present and Some Speculation About the Future' in MSA Wahab, E Katsh, D Rainey (Eds.) *Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution* (2012) pp. 21-33.

22 M Tyler 'One Hundred and Fifteen and Counting: The State of Online Dispute Resolution 2004' (retrieved from http://www.mediate.com/odrresources/docs/ODR_2004.doc).

ODR legislation proposed by UNCITRAL shall be discussed. This will show the global concern for ODR in the global business environment to which Islamic finance is fast becoming a major player. Finally, the credit reporting industry has also witnessed a wholesome use of ODR.

eBay/Square Trade Experiment

The *eBay/SquareTrade* ODR is one of the most successful projects in the early development of ODR. Founded in the mid-1990s, *Squaretrade.com* created the largest internet *Trustmark* system for small businesses.²³ B2C disputes between buyers and sellers on the famous *eBay* platform was outsourced to *SquareTrade*, which provides various ADR options mainly negotiation and mediation of the disputes *via* web-based applications.

The basic operation of *SquareTrade* online dispute resolution includes, guided web-based step-by-step processes which enable users to open a case and follow it towards closure by clicking buttons rather than typing long emails.²⁴ One of the essential elements identified by *eBay* was the need for online trust and confidence; hence, the mission of *SquareTrade*, which is to 'build trust in online transactions' and reduce the risk for buyers and sellers in online commerce.²⁵ The availability of an online resolution system will, undoubtedly excite consumers to keep shopping online. With millions of transactions concluded within seven days, the probability of disputes is high with causes ranging from 'item not received' or 'item not matching product description'.²⁶

23 S Abernethy 'Building large-scale online dispute resolution & trustmark systems' UNECE Forum on ODR 2003 (retrieved from <http://www.mediate.com/Integrating/docs/Abernethy.pdf>).

24 I Manevy 'Online dispute resolution: what future?' Université de Paris 2001.

25 S Abernethy 'Building large-scale online dispute resolution & trustmark systems' UNECE Forum on ODR 2003 p. 2 (retrieved from <http://www.mediate.com/Integrating/docs/Abernethy.pdf>).

26 *Ibid.*

The ODR processes adopted by *SquareTrade* involve multi-tiered mechanisms aimed at enhancing accessibility, confidentiality and neutrality. The CEO of *SquareTrade*, Steve Abernethy described the process:

SquareTrade's dispute resolution model was designed to deploy processes of conciliation, mediation and the option of arbitrations or recommended resolution, both as a facilitated service as well as leveraging technology to create a self-service means to help parties solve problems on their own. These processes are based on principles such as clarification, compromise, consensual participation, neutrality, and confidentiality. The model incorporates a two-stage process, beginning with Web-based technology-supported negotiation processes and escalating, if necessary, to professionally facilitated resolutions (primarily mediation).²⁷

Despite the take-over of *SquareTrade* ODR by *eBay*, the cumulative number of disputes resolved as of 2010 was about 60,000,000.²⁸ Following the successes achieved in the *eBay SquareTrade* partnership over the years, the company has developed a trustmark known as *SquareTrade* seal, which is displayed by businesses across the globe to signify commitment on the ODR services offered by *SquareTrade*. These also act as a pre-dispute ODR agreement for these businesses. However, *SquareTrade* has since relinquished its ODR systems to *eBay* and now focusses on gadget warranty, which has been dubbed as the best online protection plan for electronic devices.²⁹

²⁷ *Ibid* p. 7.

²⁸ E Katsh, L Wing 'Ten Years of Online Dispute Resolution (ODR): Looking at the Past and Constructing the Future' 38 U. TOL. L. REV. 19, 39 n.90 2006.

²⁹ O Ben-Shahar 'One-Way Contracts: Consumer Protection without Law' European Review of Contract Law Vol. 6(3) 2010 pp. 221-249.

Cybersettle.com, SettlementOnline And clickNsettle

Cybersettle.com is an online resolution centre for insurance claims, which is fast becoming routine and more viral in American societies. Established in 1996, the internet start-up has been mostly successful among its peers.³⁰ Specifically, claims involving modest amounts, such as traffic accidents and legal injuries, are best handled through *Cybersettle ODR*, although it later engaged in other e-commerce related disputes.³¹ The possibility of aggravating the meagre claim by protracted legal battles and lawyer's fee makes ODR more appealing as it limits the direct role of legal practitioners.

The mechanisms adopted at *Cybersettle*, *SmartSettle* and *ClickNsettle* through their fully automated ODR systems, include online negotiation, online mediation and online arbitration.³² Negotiation, which has been the age-long traditional preview for insurance companies in settling claims, is aimed at discouraging overdrawn legal battles over insurance claims and encouraging settlement. The most veritable technique used in any fully automated ODR system is 'Blind-bidding', which can be described as an offer of settlement made *via* a computer programme between disputants.³³ The term 'blind bidding' was originally founded in entertainment law and auctions. It involves bargaining for an item without having full knowledge or sight of the item. The method used in dispute resolution is to facilitate settlement without disclosing either the offer or acceptance or both made by the parties. In the blind-

30 T Schultz 'Connecting complaint filing processes to online resolution systems' *Commercial Law Practitioner* December 2003 pp. 307-314.

31 C Brofman *Settled!: The Online Dispute Revolution* (2008) p. 123.

32 JW Goodman 'The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites' 2 *Duke Law & Technology Review* 2003 pp. 1-16.

33 *Ibid* p. 3.

bidding technique, a settlement amount is offered through software and a notification of settlement is sent *via* email to the other party or his representative, without disclosing the exact amount. This enables the other party to post a counter-offer. The computer programme then returns an aggregate after comparing both offers. The aggregate may be accepted or rejected. Upon acceptance, the case has made progress towards resolution while a rejection will require another round of blind bidding, which must be concluded within a fixed number of days usually within 30 or 60 days.³⁴

Cybersettle is a very good model for e-government ODR which can be used to address disputes and claims between citizens and municipalities. This has helped to enhance productivity, shorten claim life-cycles and reduce legal fees.

ODR In Credit Reporting Disputes

The use of ODR in financial services delivery has been further exemplified in the activities of credit reporting agencies in the United States. The upsurge in expensive lawsuits against credit bureaus has made the agencies to actively pursue ODR as a method to avoid expensive lawsuits, which is capable of damaging company reputation.

At the core of project financing and risk management is the need to ascertain the credit-worthiness of a financial consumer which is of utmost concern to financial institutions. In order to be assured of the ability of the consumer to pay up, the credit history of consumers is generated from mortgage companies, credit card companies, banks and other creditors to create a detailed credit report. In other words, a good or healthy credit report means a positive response from potential

34 *Ibid.*

landlords, employers, lenders and finance companies.³⁵ The function of credit reporting is either outsourced to registered credit bureaus or performed as a statutory function of the apex banks in any given financial jurisdiction.

The Fair Credit Reporting Act (FCRA) 1970 of the United States regulates the collection of credit information and access to credit reports. Three main credit reporting agencies were licenced to collect credit history and issue 'credit reports' for consumers in the country.³⁶ Despite the robust legislation, incidences of errors in credit scores of consumers have not ceased to plague the industry, as consumers often resort to suing the agencies for colossal damages. In a recent Financial Trade Commission (FTC) study, it was revealed that 25% of consumers found errors and inaccuracies, which could affect their credit scores and worthiness to access financing.³⁷ Concerns were raised as to the handling of disputes and errors, as mismanagement of disputes have been the subject of soaring legal claims against the credit agencies, *Equifax*, *TransUnion* and *Experian*.³⁸

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- 35 M Mahoney 'Errors and Gotchas: How Credit Report Errors and Unreliable Credit Scores Hurt Consumers' *Consumer Reports* 2014 (retrieved from <http://consumersunion.org/wp-content/uploads/2014/04/Errors-and-Gotchas-report.pdf>).
- 36 RM Hunt 'Development and regulation of consumer credit reporting in the United States' *The Economics of Consumer Credit* (eds G Bertola, R Disney, C Grant) (2006) p. 301.
- 37 M Mahoney 'Errors and Gotchas: How Credit Report Errors and Unreliable Credit Scores Hurt Consumers' *Consumer Reports* 2014 (retrieved from <http://consumersunion.org/wp-content/uploads/2014/04/Errors-and-Gotchas-report.pdf>).
- 38 L Gunderson 'Equifax must pay \$18.6 million after failing to fix Oregon woman's credit report' *The Oregonian* 26 July 2013.

As a result of the high incidence of disputes, *Equifax* has designed an online dispute mechanism system in order to fasten the resolution of credit reporting errors and avoid expensive law suits.

The *Equifax Online Dispute* comprises of a three-step mechanism for submission of complaints which must be resolved within 30-45 days after submission. The online dispute mechanism is one of three other dispute mechanisms, the others being, dispute by phone and dispute by mail.

EQUIFAX® Online Dispute

Get Started in 3 easy steps

Step 1
Dispute Information

You will be able to choose what area of your current credit file to review. This will allow you to quickly identify and dispute any inaccurate information that may be reporting.

Step 2
Confirm

You will see a summary of the information you have disputed and you will have the opportunity to change/modify your dispute.

Step 3
Submit Dispute

You are now ready to Submit your dispute. Simply click Submit and we will verify your disputed information. Once completed, you will be notified by email.

What would you like to do? Start a dispute or check your status?

In *Get Started* you will be allowed to start an investigation on items within your credit file.
In *Check Status* you will be able to view the status of previous disputes.

Get Started **Check Status**

Figure 2: Equifax ODR Interface

Figure 2 shows the interface for submission of new disputes and checking the status or progress of existing disputes (*Equifax*, 2013).

The three-step online mechanism for disputing errors on *Equifax* credit report includes the following:

Step 1: The consumer supplies the required information on the Credit Report update form beginning with the ten-digit confirmation number, personal details (for verification) including valid-email. It is also important to specify what information is incorrect or inaccurate.

Step 2: Copies of any supporting documents (if requested) are to be sent *via* mail or fax to the *Equifax* address.

Step 3: The applicant is furnished with the result of the investigation process after 30 to 45 days *via* email. The result might make necessary amendments to the credit score.

The above-mentioned steps are specifically designed to grant real-time access to justice for consumers, who intend to file a dispute with respect to the errors contained in their credit reports. This will ultimately reduce the number of disputes that usually leads to court litigation related expenses.

Conclusion

Although ODR was originally popularised by private initiatives and university pilot projects aimed at protecting e-commerce consumers, international efforts towards the promotion of ODR have been a subject of several international platforms for quite some time. The need to promote the use and adoption of legislative instruments in commerce conducted via electronic methods, was the purpose of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce of 1996 — the first international instrument on electronic commerce. It was followed by the 2001 UNCITRAL Model Law on Electronic Signatures (MLES). Rather than being an online dispute resolution instrument, the MLES contained rules related to validity and formation of contracts concluded by electronic means. The attribution of data messages and non-discrimination against electronic transactions was the focus of the model law which was expected to be adopted by member states. Far from being a model success, the model law created disharmony as different states domesticated the law in varying degrees.

Following the developments in the dispute resolution landscape and global surge in cross-border e-commerce transactions, the UN Working Group III was commissioned in 2010 to examine possible future works on ODR for cross border electronic transactions in business-to-business and business-to-consumer disputes. A series of colloquiums have been held in order to gather opinions towards producing an acceptable ODR instrument for the resolution of cross border disputes in the global market place through ODR. In conclusion, as Islamic finance is an important segment of the global financial services sector, the Malaysian Islamic finance industry could serve as a spring board for regional ODR experiment, for Islamic financial consumers.



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